CARRIERS OF PASSENGERS— ELEVATORS — NEGLIGENCE — DEGREE OF CARE.—No one was charged with the duty of operating the elevator in the defendant's store, but when its use was required a warning call was given and by means of an operating cable it was brought to the floor where needed. The elevator shaft was guarded by a gate three feet high and five feet wide, which was raised to permit one to pass under and enter the elevator. Plaintiff had visited defendant's store for the purpose of purchasing a supply of paper and the paper being on the third floor, the defendant led the way to the elevator, raised the gate and stepping back called the warning, "Elevator!" Plaintiff, supposing this an invitation to enter the elevator, stepped forward and fell down the elevator shaft, receiving severe injuries. In an action for damages, *Held*, in operating an elevator for passengers, the owner of the building is not bound to exercise the highest degree of care and diligence, but only such care as is required of an ordinarily prudent person under the circumstances. *Burgess* v. *Stowe* (1903), — Mich. —, 96 N. W. Rep. 29.

As a general rule a common carrier of passengers is responsible for all injuries to passengers, in the course of their transportation, which might have been guarded against by the exercise of extraordinary vigilance, aided by the highest skill, and this care and vigilance extends to all the means or agencies employed by the carrier. *Penna. Co.* v. *Ray*, 102 U. S. 451; *Gleeson* v. *R.R.*, 140 U. S. 435, 11 Sup. Ct. 859; COOLEY, TORTS, (2d. ed.), 768,-769. The proprietor of a passenger elevator is a carrier of passengers and subject to the same responsibilities, as to care and diligence, as a common carrier by railroad. *Treadwell* v. *Whittier*, 80 Cal. 574, 22 Pac. 266, 5 L. R. A. 498; *Goodsell* v. *Tayler*, 41 Minn. 207, 42 N. W. Rep. 873; *Springer* v. *Ford*, 189 Ill, 430, 52 L. R. A. 930; *Mitchell* v. *Marker*, 62 Fed. 139. In the principal case, *Griffin* v. *Manice*, 166 N. Y. 188, 59 N. E. Rep. 925, 82 Am. St. Rep. 630, holding that the proprietor of a passenger elevator is not a common carrier, and that the care required is only that of an ordinarily prudent person under the circumstances, is much relied upon, although a strong dissenting opinion was given and it seems the principal case in adopting the reasoning and rule of this case announces a decision opposed to the weight of authority.

CODE PLEADING—ALLEGATION OF DUTY.—Plaintiff alleged that his intestate had been fatally burned in her effort to extinguish a fire set upon the premises through defendant's negligence. The complaint set up facts showing the nature of the fire and the danger in which her home had been placed by reason thereof, and alleged that she had attempted to put out the fire, as it was her duty to do. Defendant demurred generally and the court *Held*, that the demurrer admitted that it was the deceased's duty to attempt to extinguish the fire. *Burnett* v. *Atlantic Coast Line Ry. Co.* (1903),— N. C. —., 43 S. E. 797.

It has been generally held that an allegation of duty is a mere conclusion, that it is improper and unavailing in a pleading, and that if it does appear in a pleading it is not admitted on demurrer nor by failure to deny. *City of Ft. Wayne* v. *Christie* (1900), 156 Ind. 172, 59 N. E. 385; *McPeak* v. *Mo. Pac. Ry. Co.* (1895), 128 Mo. 617, 30 S. W. 170; *Lang* v. *Brady* (1900), 73 Conn. 707, 49 Atl. 199; *Martin* v. *Sherwood* (1902), 74 Conn. 475, 50 Atl. 564.

The doctrine of the principal case, however, finds some support in other states. Thus in *Berry* v. *Dole* (1902), 87 Minn. 471, 92 N. W. 334, the court held that, in an action for injuries resulting from a defective bridge, it was essential for plaintiff to allege a duty resting upon defendant to keep the same in repair. So in Iowa, in the case of *Humpton* v. *Unterkirchner* (1896), 97